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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,094	11/02/2001	Joern Ostermann	2000-0600	5333

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EXAMINER

AZAD, ABUL K

ART UNIT PAPER NUMBER

2626

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,094

Applicant(s)

OSTERMANN ET AL.

Examiner

ABUL K. AZAD

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-11,18,19 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-11,18,19 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/30/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the communication filed on April 20, 2006.
2. Claims 1, 3-7, 9-11, 18, 19 and 22 are pending in this action.
3. The applicant's arguments with respect to claims 1, 3-7, 9-11, 18, 19 and 22 have been fully considered but they are not deemed to be persuasive. For examiner's response to the applicant's arguments or comments, see the detailed discussion in the Response to the Arguments section.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-6, 7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblatt et al. (U.S. 2002/0007276) in view of Mitchell et al. (US 5,857,099).

Regarding claims 1 and 7, Rosenblatt et al. disclose a method of delivering multi-media message to a recipient, the multi-media message being created by a sender for delivery by an animated entity, the method comprising:

recording an audio message from the sender ((0031, lines 4-8);

receiving a choice of one of a plurality of animated entities to deliver the message (visual representatives, (0008), lines 3-8);

conforming the audio message to movements associated with the animated entity to create a multi-media message ((0015), lines 18-22) and delivering the multi-media message to the recipient with the animated entity speaking the recorded audio message from the sender ((0015), lines 9-18) and delivering the multi-media message to the recipient upon approval of the text message from the sender (preview of the message text and streaming the message through email, (0037), lines 17-21 and (0038), lines 1-3).

However, Rosenblatt et al. do not disclose but Mitchell et al. do disclose after recording the audio message from the sender, converting the audio message to a text message and presenting a text version of the audio message to the sender (col. 8, lines 4-8). It would have been obvious to one ordinarily skilled in the art at the time of the invention to supplement the teachings of Rosenblatt et al. with after recording the audio message from the sender, converting the audio message to text and presenting a text version of the audio message to the sender, as taught by Mitchell et al., in order to allow a handicapped person to create a text message.

Regarding claim 3, Rosenblatt et al. disclose the multi-media message is sent as an e-mail to the recipient ((0041), lines 6-10).

Regarding claim 4, Rosenblatt et al. disclose the multi-media message is sent as an instant message to the recipient ((00412, Lines 6-10).

Regarding claim 5, Rosenblatt et al. disclose the multi-media message is sent over the Internet to the recipient ((0029), Lines 1-5).

Regarding claim 6, Rosenblatt et al. suggest the multi-media message is sent to the recipient via a wireless network (some other network, (0029), Lines 1-5).

Regarding claim 9, Rosenblatt et al. disclose the multi-media message is sent over the Internet to the recipient ((0029), lines 1-5).

Regarding claim 10, Rosenblatt et al. disclose the multi-media message is sent as an instant message to the recipient ((0041), lines 6-10).

Regarding claim 11, Rosenblatt et al. suggest the multi-media message is sent to the recipient via a wireless network (some other network, (0029), lines 1-5).

6. Claims 18, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyashita et al. (U.S. Patent 6,289,085) in view of Mitchell et al. (US Patent 5,857,099).

Regarding claim 18, Miyashita et al. disclose a method of providing a synthesized voice with sender voice characteristics, the method comprising:

receiving an audio recording from the sender (col. 10, lines 49-52);

parameterizing the audio recording into audio parameters after receiving the approval of the sender (notification of completion of user's voice input, col. 10, lines 63-66) and using the audio parameters, synthesizing a voice that is not the sender's voice but includes at least one sender voice characteristic (col. 3, lines 26-34 and 49-58).

However, Miyashita et al. do not disclose but Mitchell et al. do disclose after receiving the audio recording, using an automatic speech recognizer and presenting a

text version of the audio recording to the sender for approval (col. 8, lines 4-8). It would have been obvious to one ordinarily skilled in the art at the time of the invention to supplement the teachings of Miyashita et al. with after receiving the audio recording, using an automatic speech recognizer and presenting a text version of the audio recording to the sender for approval, as taught by Mitchell et al., in order to allow a handicapped person to create a text message.

Regarding claim 19, Miyashita et al. further disclose the at least one sender voice characteristic is one of an accent, voice inflection, pitch, or dialect (col. 1, lines 43-48., col. 7, line 57).

Regarding claim 22, Miyashita et al. further disclose parameterizing the audio recording into audio parameters further comprises using an alignment program for segmenting the audio into phonemes and labeling the audio recording with the phonemes, duration, pitch, stress and other parameters (col. 3, lines 49-57; speed adjustment, col. 7, line 58; pitch, col. 7, line 57; accent, col. 8, lines 37-44).

Response to Arguments

7. The applicant argues, "Rosenblatt does not disclose or suggest the recipient approving of the text. Mitchell fails to satisfy the deficiencies of Rosenblatt. Therefore, Applicants submit that independent claim 1 is patentable over Rosenblatt in view of Mitchell and respectfully request that the rejection of claim 1 be withdrawn".

The examiner disagrees with the applicant's above assertion because Mitchell teaches the deficiencies of Rosenblatt as stated above in the rejection of the claim. In

the argument it is unclear, why Mitchell would not be obvious to one of ordinary skill in the art to use Mitchell's invention in the Rosenblatt's invention.

8. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, suggestion or motivation are the knowledge generally available to one of ordinary skill in the art as "It would have been obvious to one ordinarily skilled in the art at the time of the invention to supplement the teachings of Miyashita et al. with after receiving the audio recording, using an automatic speech recognizer and presenting a text version of the audio recording to the sender for approval, as taught by Mitchell et al., in order to allow a handicapped person to create a text message."

9. In response to applicant's argument that "if a handicapped person wished to send a text message, . . . the sender may email an audio file, including a voice mail message, to the visually impaired recipient as an attachment for the visually impaired recipient to play upon receipt. Therefore, there is absolutely no motivation to combine the teachings of Miyashita with those of Mitchell, as alleged by the Examiner", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly

suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Abul K. Azad** whose telephone number is **(571) 272-7599**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Richemond Dorvil**, can be reached at **(571) 272-7602**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Or faxed to: **(571) 273-8300**.

Hand-delivered responses should be brought to **401 Dulany Street, Alexandria, VA-22314** (Customer Service Window).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 13, 2006



Abul K. Azad
Primary Examiner
Art Unit 2626